IN THE

Supreme Court of the United States.

October Term, 1929.

Nos. 546 and 547.

UNITED STATES OF AMERICA, *Petitioner.*

v.

PROVIDENT TRUST COMPANY OF PENNSYLVANIA and CHARLES SINKLER, Administrators C. T. A. of Estate of JAMES K. YOUNG, deceased.

ROBERT H. LUCAS, Commissioner of Internal Revenue, *Petitioner,*

v.

GIRARD TRUST COMPANY and JOSEPH L. WOOLSTON, Executors of the Estate of BEULAH H. J. WOOLSTON, deceased.

MOTION OF RESPONDENTS TO ADVANCE.

Comes now John S. Sinclair and Williams, Myers & Quiggle, attorneys for the respondents in the above entitled causes, and move that these cases be advanced for hearing with the case of *James E. Tyler, Jr.*, and *William G. Tyler, Administrators of the Estate of James E. Tyler, Deceased*, v. *United States of America*, October Term, 1929, No. 428, and in support of their motion make the following brief statement of the matter involved, and the reasons relied upon for the advancement.

STATEMENT OF THE MATTER INVOLVED.

These cases present the question of whether Section 402 (d) of the Revenue Act of 1921 is unconstitutional in so far as it requires that the value of property held by husband and wife as tenants by the entirety be included in the gross estate of the deceased spouse for Federal estate tax purposes.

In the *Young* case, the facts are that James K. Young and Mary Wilson Young, his wife, acquired as tenants by the entirety several parcels of real estate in Philadelphia. Later, they conveyed some of them for a consideration part paid and the balance secured by a ground rent, reserved to themselves as tenants by the entirety, to yield them a certain annual income, redeemable at a named figure.

James K. Young died in 1923. The Commissioner of Internal Revenue, upon review and audit of the estate tax return made by his administrators, included in the decedent's gross estate the value of the ground rent and other property, so held, and determined a deficiency in the sum of $1,244.43. From this action Young's administrators appealed and the Board of Tax Appeals entered judgment against the Commissioner. The United States then brought suit in the District Court against Young's administrators to collect the additional tax so determined. The court held that the Congress, by including for taxing purposes, in the gross estate of a decedent, property held by him and his wife as tenants by the entirety, exceeded its constitutional power and entered judgment for the defendants.

The United States thereupon appealed to the Circuit Court of Appeals for the Third Circuit, which on October 4, 1929, affirmed the decision of the District Court.

In the *Woolston* case the identical question was presented, the Commissioner of Internal Revenue attempting to include in the gross estate of Beulah H. J. Woolston, who died February 3, 1924, the entire value of the real estate held by her and her husband as tenants by the entirety. The said Commissioner found a deficiency in estate tax in the sum of $2,205.32, from which determination the executors appealed to the Board

of Tax Appeals. The Board determined the Commissioner's action to be erroneous and entered an order of redetermination, stating that there had been an overpayment of the estate tax in the amount of $22.79. On petition for review filed by the Commissioner, the Circuit Court of Appeals for the Third Circuit, on October 4, 1929, in a *per curiam* decision, sustained the decision of the Board upon the authority of the *Young* case, decided the same day.

The United States, thereupon, on or about December 31, 1929, filed a petition for a writ of certiorari with this Court in both the *Young* and *Woolston* cases, and the respondents have filed a waiver of their right to file a brief in opposition to the granting of a writ of certiorari.

REASONS RELIED UPON FOR THE ADVANCEMENT.

There is now pending before this Court on a writ of certiorari granted November 25, 1929, the case of *James E. Tyler, Jr.*, and *William G. Tyler, Administrators of the Estate of James E. Tyler, Deceased*, v. *United States*. In that case, James E. Tyler, a resident of Maryland, died May 7, 1918. Certain property, at the date of his death, was owned by Tyler and his wife as tenants by the entirety. The Commissioner of Internal Revenue included the value of this property in the decedent's gross estate, thereby increasing the estate tax by $3,337.67, which was paid by the administrators. A claim for refund was seasonably filed, and, upon its rejection, the administrators entered suit for recovery of this amount in the United States District Court for the District of Maryland. That Court rendered judgment for the taxpayer, which judgment was reversed by the Circuit Court of Appeals for the Fourth Circuit on July 6, 1929, and rendered an opinion holding that Congress intended to tax tenancies by the entireties and that such a tax was not in violation of the Constitution.

The decision of the Circuit Court of Appeals for the Fourth Circuit in the *Tyler* case is, accordingly, in conflict with the

decisions of the Circuit Court of Appeals for the Third Circuit in the *Young* and *Woolston* cases. The same question is involved in all three of these cases, and while the *Tyler* case involves the construction of the Revenue Act of 1916 and the *Young* and *Woolston* cases involve the construction of the Revenue Act of 1921, the provisions of these Acts under consideration in these cases are substantially the same.

Wherefore, the respondents pray that the cases be advanced upon the calendar and assigned for hearing at the same time that the case of *United States* v. *Tyler*, October Term, No. 428, is heard.

Respectfully submitted,

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By PAUL F. MYERS,
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